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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,267	05/25/2007	Jane Elizabeth Ormond	2818.3460001	6590

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.  
1100 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER
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RIGGLEMAN, JASON PAUL

ART UNIT	PAPER NUMBER
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1711

MAIL DATE	DELIVERY MODE
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05/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,267	<b>Applicant(s)</b> ORMOND ET AL.	
	<b>Examiner</b> JASON P. RIGGLEMAN	<b>Art Unit</b> 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/30/2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/12/2009, 12/30/2009, 2/19/2010</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. Applicant's reply, filed on 12/30/2009, is acknowledged. Claims 1-18 are pending. Claims 1-3, 5-8, and 10 are amended. Claims 11-18 are new.

### ***Response to Arguments***

2. Applicant's amendments and arguments, received 12/30/2009, have been considered. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection (necessitated by both amendment and the IDS submission of 11/12/2009).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "which the reservoir has a removable portion configured to be removed" is not understood. For purposes of examination, this is assumed to be – which the reservoir has a removable portion.

### ***Drawings***

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "11b" and "21". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should

Art Unit: 1711

include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-9 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Losier et al. (US Patent No. 6336763).

7. Losier et al. teaches a device (10) for cleaning (fabric is intended use). The device has a reservoir for storing a cleaning fluid and a scrubbing member (24). The scrubbing member is in fluid communication with the reservoir, Fig. 1. The scrubbing member has one or more dispensing orifices (holes in mesh fabric). There is a movable platform for forcing said cleaning fluid to exit from the reservoir to the scrubber member, where it is exposed on an exterior portion of the scrubber member via orifices (holes in mesh fabric). The scrubbing member comprises a coarse mesh structure (Column 2, Lines 55-60). The platform has a wall or base portion of the reservoir and sliding the-platform within the reservoir, progressively compresses the cleaning composition which is thereby forced to exit the reservoir and flow to the scrubbing means. The reservoir is refillable with cleaning fluid or components thereof, by a user. The reservoir has a removable portion end cap (18), Fig. 3, (see 28). The platform is configured for reciprocal substantially axial movement within a substantially tubular reservoir. The platform is movable

Art Unit: 1711

by means of screw feed mechanism. The platform has a peripheral edge configured to slide in a sealing relationship with an inner surface of the reservoir, whereby sliding is guided by said inner surface. The scrubbing member has a coarse mesh structure having apertures therein that constitute a plurality of dispensing orifices. The coarse mesh structure is a coarse mesh fabric. The removable end portion (18) includes the mesh structure (24) and the mesh structure (24) and end cap (18) are formed into a single unit (Column 7, lines 8-28). Note: the process of forming the integrally cap and mesh structure is not germane to the structure of the apparatus; however, Losier et al teaches bonding the mesh structure and end cap by a process in which "the hot plastic bonds to the mesh fabric" (Column 7, Line 22) which can be considered to be "welding" -

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*1. To press or beat into intimate and permanent union, as two pieces of iron when heated almost to fusion. [1913 Webster]*

*Note: Very few of the metals, besides iron and platinum, are capable of being welded. Horn and tortoise shell possess this useful property. [1913 Webster]*

*2. Fig.: To unite closely or intimately. [1913 Webster]*

*Two women faster welded in one love. --Tennyson. [1913 Webster]*

**Source:** *The Collaborative International Dictionary of English v.0.48*

8. Claims 10-15 are rejected under 35 U.S.C. 102(b) as anticipated by Losier et al. (US Patent No. 6336763) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Losier et al. (US Patent No. 6336763).

9. Losier et al. teaches a device (10) for cleaning. The device has a reservoir for storing a cleaning fluid and a scrubbing member (24). The scrubbing member is in fluid communication with the reservoir, Fig. 1. The scrubbing member has one or more dispensing orifices (holes in

Art Unit: 1711

mesh fabric). There is a movable platform for forcing said cleaning fluid to exit from the reservoir to the scrubber member, where it is exposed on an exterior portion of the scrubber member via orifices (holes in mesh fabric). The scrubbing member comprises a coarse mesh structure (Column 2, Lines 55-60). The platform has a wall or base portion of the reservoir and sliding the-platform within the reservoir, progressively compresses the cleaning composition which is thereby forced to exit the reservoir and flow to the scrubbing means. The reservoir is refillable with cleaning fluid or components thereof, by a user. The reservoir has a removable portion end cap (18), Fig. 3, (see 28). The platform is configured for reciprocal substantially axial movement within a substantially tubular reservoir. The platform is movable by means of screw feed mechanism. The platform has a peripheral edge configured to slide in a sealing relationship with an inner surface of the reservoir, whereby sliding is guided by said inner surface. The scrubbing member has a coarse mesh structure having apertures therein that constitute a plurality of dispensing orifices. The coarse mesh structure is a coarse mesh fabric. The removable end portion (18) includes the mesh structure (24) and the mesh structure (24) and end cap (18) are formed into a single unit (Column 7, lines 8-28). Note: the process of forming the integrally cap and mesh structure is not germane to the structure of the apparatus; however, Losier et al teaches bonding the mesh structure and end cap by a process in which "the hot plastic bonds to the mesh fabric" (Column 7, Line 22) which can be considered to be "welding" -

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*1. To press or beat into intimate and permanent union, as two pieces of iron when heated almost to fusion. [1913 Webster]*

*Note: Very few of the metals, besides iron and platinum, are capable of being welded. Horn and tortoise shell possess this useful property. [1913 Webster]*

Art Unit: 1711

*2. Fig.: To unite closely or intimately. [1913 Webster]*

*Two women faster welded in one love. --Tennyson. [1913 Webster]*

**Source:** The Collaborative International Dictionary of English v.0.48

10. Losier et al. teaches a method of cleaning/polishing a fabric using a device in which there is a filled reservoir (with a semisolid) and then securing a removable portion e.g. end cap and scrubbing member on the device to close the reservoir (Column 1, Lines 16-27). The platform is moved e.g by turning a screw-feed mechanism to force cleaning/polishing fluid from the reservoir to be exposed on the exterior of the scrubbing means; cleaning the fabric by scrubbing with said scrubbing means.

11. In the alternative, Losier et al. does not teach cleaning fabric and using soapy water solution (solid/granular solid & solvent); however, it has been held that an obvious choice in design (absent any showing of criticality) is not patentable (*In re Kuhle* 188 USPQ 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Losier et al. to utilize a conventional dispenser-type applicator and liquid soap to pre-treat fabric to achieve the expected result

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1711

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over by Losier et al. (US Patent No. 6336763), as applied to claims 1 and 8 above, and further in view of Podolsky (US Patent No. 5100252) or McCarthy (US Patent No. 2748991).

15. Losier et al. does not teach the telescopic screw feed mechanism has first and second threaded shafts connected together; however, both Podolsky and McCarthy teach the use of first and second threaded shafts to create telescoping mechanism, Fig. 1 of McCarthy and Fig. 2 of Podolsky. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Losier et al. with McCarthy or Podolsky to create an applicator with a conventional means to squeeze out a paste (semisolid) substance to achieve the expected result.

16. Claims 10-15 are rejected under 35 U.S.C. 103(a) as obvious over Barnabas et al. (US Patent Publication No. US2003/0008799) in view of Losier et al. (US Patent No. 6336763).

17. Barnabas et al. teaches an applicator device for the pre-treatment of fabric, Figs. 25-26. A method is used in which there is a solid/granular solid & solvent applied to the laundry.

18. Barnabas et al. does not teach the details of the applicator; however, Losier et al. teaches a device (10) for cleaning. The device has a reservoir for storing a cleaning fluid and a scrubbing member (24). The scrubbing member is in fluid communication with the reservoir,

Art Unit: 1711

Fig. 1. The scrubbing member has one or more dispensing orifices (holes in mesh fabric). There is a movable platform for forcing said cleaning fluid to exit from the reservoir to the scrubber member, where it is exposed on an exterior portion of the scrubber member via orifices (holes in mesh fabric). The scrubbing member comprises a coarse mesh structure (Column 2, Lines 55-60). The platform has a wall or base portion of the reservoir and sliding the-platform within the reservoir, progressively compresses the cleaning composition which is thereby forced to exit the reservoir and flow to the scrubbing means. The reservoir is refillable with cleaning fluid or components thereof, by a user. The reservoir has a removable portion end cap (18), Fig. 3, (see 28). The platform is configured for reciprocal substantially axial movement within a substantially tubular reservoir. The platform is movable by means of screw feed mechanism. The platform has a peripheral edge configured to slide in a sealing relationship with an inner surface of the reservoir, whereby sliding is guided by said inner surface. The scrubbing member has a coarse mesh structure having apertures therein that constitute a plurality of dispensing orifices. The coarse mesh structure is a coarse mesh fabric. The removable end portion (18) includes the mesh structure (24) and the mesh structure (24) and end cap (18) are formed into a single unit (Column 7, lines 8-28). Note: the process of forming the integrally cap and mesh structure is not germane to the structure of the apparatus; however, Losier et al teaches bonding the mesh structure and end cap by a process in which "the hot plastic bonds to the mesh fabric" (Column 7, Line 22) which can be considered to be "welding". It would have been obvious to one of ordinary skill in the art to use the applicator construction of Losier et al. to modify Barnabas et al. to achieve the expected result of having means to apply a thick paste cleaning composition.

***Double Patenting***

19. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

20. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

21. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1711

22. Claims 1-18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 11-13 of copending Application No. 10/579353. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of 10/579353 anticipate the current claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Conclusion*

23. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/12/2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

24. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1711

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON P. RIGGLEMAN whose telephone number is (571)272-5935. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/  
Supervisory Patent Examiner, Art Unit 1711

Jason P Riggleman  
Examiner  
Art Unit 1711

/J. P. R./  
Examiner, Art Unit 1711